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AND SUPPORT SERVICES GROUP, INC., and DENISE HUSKEY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TODD DUVALL

Plaintiff,

v.

ARAMARK SERVICES, INC.,
ARAMARK FOOD AND SUPPORT
SERVICES GROUP, INC., DENISE
HUSKEY, an individual, and DOES 1
through 20, inclusive,

Defendants.

Case No.: 8:17-cv-01076

[Assigned to District Judge Cormac J.
Carney and Magistrate Judge Karen E.
Scott]

Room: 9B

**ORDER RE STIPULATED PROTECTIVE
ORDER**

**Discovery Document: Referred to
Magistrate Judge Karen E. Scott**

Trial Date: 07/24/18

Complaint Filed: 04/26/17

Removed: 06/21/17

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 The parties to this proceeding anticipate that during the course of the above-
13 captioned litigation, the parties will produce or provide documents and information
14 (including electronic data), which one or more parties contend contain medical
15 records, employee personnel information, including employee discipline or
16 employment termination records, or other sensitive, private, confidential, financial,
17 or proprietary information. The parties agree that all information designated as
18 “Confidential” shall be deemed “Confidential Information” and “Subject to
19 Protective Order.” The parties to this proceeding wish to protect the confidentiality
20 of such documents and information and to ensure that the parties can obtain and
21 pursue discovery with the minimum of delay and expense. The parties have agreed
22 to stipulate to protect certain privileged and otherwise protected documents, data
23 (including electronically stored information), and other information, including
24 without limitation, metadata (collectively, “document” or “documents”), against
25 claims of waiver and inadvertent production in the event they are produced during
26 the course of this litigation whether pursuant to a Court Order, a party’s discovery
27 request or informal production.

28 Accordingly, to expedite the flow of information, to facilitate the prompt

1 resolution of disputes over confidentiality of discovery materials, to adequately
2 protect information the parties are entitled to keep confidential, to ensure that the
3 parties are permitted reasonable necessary uses of such material in preparation for
4 and in the conduct of trial, to address their handling at the end of the litigation, and
5 serve the ends of justice, a protective order for such information is justified in this
6 matter. It is the intent of the parties that information will not be designated as
7 confidential for tactical reasons and that nothing be so designated without a good
8 faith belief that it has been maintained in a confidential, non-public manner, and
9 there is good cause why it should not be part of the public record of this case.

10 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

11 The parties further acknowledge, as set forth in Section 12.3, below, that this
12 Stipulated Protective Order does not entitle them to file confidential information
13 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
14 and the standards that will be applied when a party seeks permission from the court
15 to file material under seal.

16 There is a strong presumption that the public has a right of access to judicial
17 proceedings and records in civil cases. In connection with non-dispositive motions,
18 good cause must be shown to support a filing under seal. *See Kamakana v. City*
19 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*
20 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
21 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
22 orders require good cause showing), and a specific showing of good cause or
23 compelling reasons with proper evidentiary support and legal justification, must be
24 made with respect to Protected Material that a party seeks to file under seal. The
25 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
26 does not—without the submission of competent evidence by declaration,
27 establishing that the material sought to be filed under seal qualifies as confidential,
28 privileged, or otherwise protectable—constitute good cause. Further, if a party

1 requests sealing related to a dispositive motion or trial, then compelling reasons, not
2 only good cause, for the sealing must be shown, and the relief sought shall be
3 narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific*
4 *Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of
5 information, document, or thing sought to be filed or introduced under seal in
6 connection with a dispositive motion or trial, the party seeking protection must
7 articulate compelling reasons, supported by specific facts and legal justification, for
8 the requested sealing order. Again, competent evidence supporting the application
9 to file documents under seal must be provided by declaration.

10 Any document that is not confidential, privileged, or otherwise protectable in
11 its entirety will not be filed under seal if the confidential portions can be redacted.

12 If documents can be redacted, then a redacted version for public viewing,
13 omitting only the confidential, privileged, or otherwise protectable portions of the
14 document, shall be filed. Any application that seeks to file documents under seal in
15 their entirety should include an explanation of why redaction is not feasible.

16 2. DEFINITIONS

17 2.1 Action: *TODD DUVALL v. ARAMARK SERVICES, INC., ARAMARK*
18 *FOOD AND SUPPORT SERVICES GROUP, INC., DENISE HUSKEY, an*
19 *individual, and DOES 1 through 20, inclusive*, inclusive. Case No. 8:17-cv-01076.

20 2.2 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
23 it is generated, stored or maintained) or tangible things that qualify for protection
24 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
25 Cause Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
27 support staff).

28 2.5 Designating Party: a Party or Non-Party that designates information or

1 items that it produces in disclosures or in responses to discovery as
2 “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless of
4 the medium or manner in which it is generated, stored, or maintained (including,
5 among other things, testimony, transcripts, and tangible things), that are produced
6 or generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as
9 an expert witness or as a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 2.9 Non-Party: any natural person, partnership, corporation, association or
14 other legal entity not named as a Party to this action.

15 2.10 Outside Counsel of Record: attorneys who are not employees of a party
16 to this Action but are retained to represent or advise a party to this Action and have
17 appeared in this Action on behalf of that party or are affiliated with a law firm that
18 has appeared on behalf of that party, and includes support staff.

19 2.11 Party: any party to this Action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.

28 2.14 Protected Material: any Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or
8 compilations of Protected Material; and (3) any testimony, conversations, or
9 presentations by Parties or their Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial shall be governed by the orders of the
11 trial judge. This Order does not govern the use of Protected Material at trial.

12 4. DURATION

13 Once a case proceeds to trial, information that was designated as
14 CONFIDENTIAL or maintained pursuant to this protective order used or
15 introduced as an exhibit at trial becomes public and will be presumptively available
16 to all members of the public, including the press, unless compelling reasons
17 supported by specific factual findings to proceed otherwise are made to the trial
18 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
19 “good cause” showing for sealing documents produced in discovery from
20 “compelling reasons” standard when merits-related documents are part of court
21 record). Accordingly, the terms of this protective order do not extend beyond the
22 commencement of the trial.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection
26 under this Order must take care to limit any such designation to specific material
27 that qualifies under the appropriate standards. The Designating Party must
28 designate for protection only those parts of material, documents, items or oral

1 or written communications that qualify so that other portions of the material,
2 documents, items or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber the case development process or to
7 impose unnecessary expenses and burdens on other parties) may expose the
8 Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it
10 designated for protection do not qualify for protection that Designating Party must
11 promptly notify all other Parties that it is withdrawing the inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix at a minimum, the legend
21 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
22 contains protected material. If only a portion of the material on a page qualifies for
23 protection, the Producing Party also must clearly identify the protected portion(s)
24 (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection
26 need not designate them for protection until after the inspecting Party has indicated
27 which documents it would like copied and produced. During the inspection and
28 before the designation, all of the material made available for inspection shall be

1 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
2 documents it wants copied and produced, the Producing Party must determine
3 which documents, or portions thereof, qualify for protection under this Order. Then,
4 before producing the specified documents, the Producing Party must affix the
5 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
6 portion of the material on a page qualifies for protection, the Producing Party also
7 must clearly identify the protected portion(s) (e.g., by making appropriate markings
8 in the margins).

9 (b) for testimony given in depositions that the Designating Party identifies the
10 Disclosure or Discovery Material on the record, before the close of the
11 deposition all protected testimony.

12 (c) for information produced in some form other than documentary and
13 for any other tangible items, that the Producing Party affix in a prominent place on
14 the exterior of the container or containers in which the information is stored the
15 legend “CONFIDENTIAL. ”If only a portion or portions of the information
16 warrants protection, the Producing Party, to the extent practicable, shall identify the
17 protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the Designating Party’s right to secure protection under this Order for such
21 material. Upon timely correction of a designation, the Receiving Party must make
22 reasonable efforts to assure that the material is treated in accordance with the
23 provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.

28 6.2 Meet and Confer. The Challenging Party shall initiate the dispute

1 resolution process under Local Rule 37.1 et seq.

2 6.3 The burden of persuasion in any such challenge proceeding shall be on the
3 Designating Party. Frivolous challenges, and those made for an improper purpose
4 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the Challenging Party to sanctions. Unless the Designating Party has
6 waived or withdrawn the confidentiality designation, all parties shall continue to
7 afford the material in question the level of protection to which it is entitled under
8 the Producing Party's designation until the Court rules on the challenge.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending or attempting to settle this Action. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. When the Action has been terminated, a
15 Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
18 location and in a secure manner that ensures that access is limited to the persons
19 authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
21 otherwise ordered by the court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated
23 "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to
26 disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably necessary for this Action;

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional
7 Vendors to whom disclosure is reasonably necessary for this Action and who
8 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the
12 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
13 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they
14 will not be permitted to keep any confidential information unless they sign the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
16 agreed by the Designating Party or ordered by the court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material may
18 be separately bound by the court reporter and may not be disclosed to anyone
19 except as permitted under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel,
21 mutually agreed upon by any of the parties engaged in settlement discussions.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL,” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena
3 or order is subject to this Protective Order. Such notification shall include a copy
4 of this Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action
9 as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action
14 to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-
18 Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce
23 a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party that
27 some or all of the information requested is subject to a confidentiality agreement
28 with a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this Action, the relevant discovery request(s), and a reasonably
3 specific description of the information requested; and

4 (3) make the information requested available for inspection by the Non-
5 Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within 14
7 days of receiving the notice and accompanying information, the Receiving Party
8 may produce the Non-Party's confidential information responsive to the discovery
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
10 not produce any information in its possession or control that is subject to the
11 confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and
13 expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
18 writing the Designating Party of the unauthorized disclosures, (b) use its best
19 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms of
21 this Order, and (d) request such person or persons to execute the "Acknowledgment
22 and Agreement to Be Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other
27 protection, the obligations of the Receiving Parties are those set forth in Federal
28 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for
2 production without prior privilege review. Pursuant to Federal Rule of Evidence
3 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
4 of a communication or information covered by the attorney-client privilege or work
5 product protection, the parties may incorporate their agreement in the stipulated
6 protective order submitted to the court.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order, no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Local Civil Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 **13. FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must
25 return all Protected Material to the Producing Party or destroy such material. As
26 used in this subdivision, "all Protected Material" includes all copies, abstracts,
27 compilations, summaries, and any other format reproducing or capturing any of the
28 Protected Material. Whether the Protected Material is returned or destroyed, the

1 Receiving Party must submit a written certification to the Producing Party (and, if
2 not the same person or entity, to the Designating Party) by the 60 day deadline that
3 (1) identifies (by category, where appropriate) all the Protected Material that was
4 returned or destroyed and (2) affirms that the Receiving Party has not retained any
5 copies, abstracts, compilations, summaries or any other format reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel
7 are entitled to retain an archival copy of all pleadings, motion papers, trial,
8 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
9 and trial exhibits, expert reports, attorney work product, and consultant and expert
10 work product, even if such materials contain Protected Material. Any such archival
11 copies that contain or constitute Protected Material remain subject to this Protective
12 Order as set forth in Section 4 (DURATION).

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1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: October 23, 2017

**CALIFORNIA EMPLOYMENT
COUNSEL, APC**

9 By: /s/ Melissa D. Cardenas
10 Raymond E. Hane III
11 Melissa D. Cardenas
12 Attorneys for Plaintiff, Todd Duvall

13 DATED: October 23, 2017

MORGAN, LEWIS & BOCKIUS LLP

15 By: /s/ Andrew P. Frederick
16 Melinda S. Riechert
17 Andrew P. Frederick
18 Attorneys for Defendants,
19 ARAMARK SERVICES, INC.,
20 ARAMARK FOOD AND SUPPORT
SERVICES GROUP, INC., and DENISE
HUSKEY

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22
23 DATED: October 24, 2017


HON. KAREN E. SCOTT
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its
5 entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Central District of California on [date] in the
7 case of *Todd Duvall v. Aramark Services, Inc., et al*, Case Number 8:17-cv-01076.
8 I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with
13 the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of
17 this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____
27
28